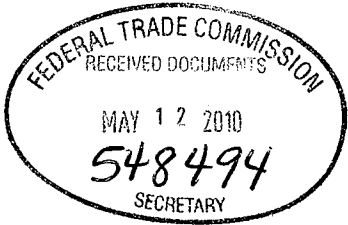


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



COMMISSIONERS:

- Jon Leibowitz, Chairman
- Julie Brill
- William E. Kovacic
- Edith Ramirez
- J. Thomas Rosch

In the Matter of)
Carilion Clinic)
a corporation)

Docket No. 9338

Application for Approval of Divestiture of the Center for Advanced Imaging

I. INTRODUCTION

Pursuant to Section 2.41(f) of the Federal Trade Commission (“FTC”) Rules of Practice and Procedure and Paragraph II of the Decision and Order issued on December 1, 2009 by the Commission, Respondent Carilion Clinic (“Carilion Clinic” or “Carilion”) respectfully submits this application for approval of divestiture of the Center for Advanced Imaging (“CAI”) in connection with the matter entitled In the Matter of Carilion Clinic, FTC Docket No. 9338.

This matter arose out of Carilion’s acquisition of CAI and the Center for Surgical Excellence, on or about August 28, 2008. On September 24, 2009 Carilion Clinic executed an Agreement Containing Consent Order that included an Order to Maintain Assets and a Decision and Order, to settle the FTC’s Complaint alleging that Carilion’s acquisition of CAI violated Section 7 of the Clayton Act. On October 6, 2009 the Commission accepted the Agreement Containing Consent Order, the Order to Maintain Assets and the Decision and Order for public

comment. After the close of the public comment period, the Commission issued the Decision and Order on December 1, 2009.

In this application, Carilion seeks approval for the proposed divestiture of CAI to InSight Health Corp. (“InSight”). The terms of the proposed divestiture are described in the attached Definitive Agreement (Confidential Exhibit A).

Because this petition and Confidential Exhibit A contain confidential and competitively sensitive business information relating to the divestiture of CAI, the disclosure of which may harm the ongoing competitiveness of CAI and prejudice Carilion Clinic, Carilion has redacted confidential information from the public version of this petition. Pursuant to Section 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, Carilion requests that the confidential portion of this petition and the confidential material contained herein, including but not limited to the Definitive Agreement, be afforded confidential treatment under 5 U.S.C. §552 and Section 4.10(a)(2) of the Commission’s Rules of Practice and Procedures. 16 C.F.R. §4.10(a)(2). The confidential portions of this memorandum and Exhibit A are exempt from disclosure under the Federal Freedom of Information Act and the Hart Scott Rodino Act. 5 U.S.C. §552; 15 U.S.C. §18a(h).

II. CARILION MARKETED CAI FOR DIVESTITURE

On September 24, 2009 Carilion signed the Agreement Containing Consent Order. Prior to that date, Carilion began discussions with a potential acquirer regarding the possible divestiture of CAI. After September 24, 2009, additional parties indicated an interest in acquiring CAI. Carilion provided those entities with business information related to CAI in a timely fashion, so that those parties could better assess their interest in CAI.

During the divestiture process and negotiations with potential acquirers, Carilion has updated the FTC staff on progress of the negotiations and as to prospective acquirers. In addition to the required compliance reports that Carilion timely has filed, Carilion has communicated information to the FTC staff. Similarly, Carilion has encouraged the potential buyers to communicate with the FTC staff.

This divestiture application proffers one of those parties, InSight, as the proposed acquirer for CAI. As described in more detail below, InSight has the financial resources and operational knowledge to be a strong and effective competitor of imaging services in the Roanoke area.¹ Approval of InSight as the buyer of CAI will meet the purpose and objectives of the Decision and Order and be consistent with its terms.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Carilion

has apprised the FTC staff of the terms and conditions of the proposed transaction and has kept the FTC apprised of particular concerns and issues that have arisen as this transaction proceeded.

¹ The Roanoke Area is defined by the Paragraph I, CC of the Decision and Order.
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In addition, Carilion has timely filed its compliance report updating the Commission and the staff on the status of Carilion's efforts to divest CAI.

III. INSIGHT WILL BE A STRONG AND EFFECTIVE COMPETITOR FOR IMAGING SERVICES IN THE ROANOKE AREA

A. InSight Has Significant Operations Experience

In addition to the wealth of experience from the executive team, Insight Imaging ("InSight") currently is a provider of advanced diagnostic imaging services including magnetic resonance imaging ("MRI"), Open MRI, Computerized Tomography ("CT"), and positron emission tomography with computerized tomography ("PET/CT"). InSight provides a variety of diagnostic imaging services, through a network of fixed-site centers and mobile facilities. As one of the largest integrated providers of diagnostic imaging services in the nation, InSight serves more than 500,000 patients nationwide on an annual basis through a network of approximately 60 fixed site imaging centers and more than 100 mobile diagnostic imaging centers. In addition to offering MRI services, many of InSight's fixed site imaging centers offer multi-modality imaging services (e.g., offering MRI in addition to CT, PET, x-ray etc.). InSight has found that physicians refer patients to InSight facilities due to its service reputation, clinical excellence, turnaround time, ease of scheduling and convenient locations, among other things. Furthermore, InSight's business model (as described in publicly available documents) focuses on activities that are aimed to maximize "utilization of existing capacity" and increase "economies of scale."²

InSight has locations in more than thirty states, including three fixed-site centers in Northern Virginia. This transaction would result in an expansion of InSight's operations in the

² From the SEC filings of the Company.

State of Virginia.

B. InSight's Corporate Team Has Significant Experience in Operating Imaging Facilities

InSight will be a strong and effective competitor for imaging services in the Roanoke area. InSight is a national company with a corporate office in Lake Forest, California. InSight's executive team is highly experienced in operating imaging centers and in leading health care corporations. As a result of that significant experience, InSight's executive team is acutely aware of both the regulatory constraints in the health care industry, as well as the competitive landscape for imaging providers. More specifically, the executive team includes the individuals listed below.

- * Louis E. Hallman, III is the President and Chief Executive Officer of InSight and has held that role since April 7, 2008. Mr. Hallman served as InSight's Interim Chief Operating Officer from October 29, 2007 through April 7, 2008. Prior to that he was InSight's Executive Vice President and Chief Strategy Officer. Mr. Hallman has significant experience in running health care and technology corporations. He previously served as the president and Chief Executive Officer of Homesquared Inc., a supplier of web-based software applications to production homebuilders and was a co-founder of TheraTx, Inc., which became a diversified health care services company listed on NASDAQ. He currently serves on the board of directors of VeriCare Management, Inc., a provider of behavioral solutions to the long-term care industry.
- * Patricia Blank is the Executive Vice President – Business Process Management of InSight and she has held that role since November 10, 2009. She was InSight's Executive Vice President - Revenue Cycle Management from May 15, 2008 to

November 10, 2009. Prior to holding this position, she was InSight's Executive Vice President - Clinical Services and Support. She has also served as InSight's Executive Vice President-Enterprise Operations and InSight's Executive Vice President and Chief Information Officer from September 1, 1999 to October 22, 2004. Prior to joining InSight, Ms. Blank was the principal of Blank & Company, a consulting firm specializing in health care consulting. In addition, Ms. Blank previously served as the Executive Vice President and Chief Operating Officer of HealthHelp, Inc., a Houston, Texas-based radiology services organization managing radiology provider networks in multiple states. She has also served as a corporate director of radiology of FHP, a California insurance company.

- * Keith Kelson is the Executive Vice President and Chief Financial Officer. Mr. Kelson served as Chief Financial Officer of Securus Technologies, Inc., a national telecommunications company, from September 2004 to July 2008 and served as Chief Financial Officer of Evercom Holdings, Inc., from March 2000 until it was acquired by Securus in September 2004. He has over 20 years of combined accounting experience, serving seven of those years in public accounting with Deloitte & Touche LLP and thirteen years in financial management.
- * Scott McKee is InSight's Senior Vice President - Strategic Development and has held that role since December 1, 2009. He was InSight's Vice President - Corporate Development from August 1, 2008 to December 1, 2009. Mr. McKee served as Chief Development Officer of American Health Imaging, Inc., a national diagnostic imaging company, from 2005 to 2008 and served in several capacities at Center for

Diagnostic Imaging, Inc., a national diagnostic imaging company, from 2000 through 2005. He has over 9 years of combined experience in diagnostic imaging in finance and development. Mr. McKee has a B.B.A. in Marketing and an M.B.A with emphasis in finance from the University of North Dakota.

- * Clark Nielsen is InSight's Senior Vice President – Sales and has held that role since November 9, 2009. Prior to joining InSight, Mr. Nielsen held multiple position of increased responsibility over a 20 year career at Philips Healthcare. Responsibilities ranged from Computerized Tomography Product Specialist, Region Sales Vice President and Strategic Sales Vice President for North America. Prior to his career with Philips Healthcare, Mr. Nielsen spent seven years working for a medical imaging dealer as a service engineer, account executive and sales manager. He holds a Bachelor's degree in Business Management from the University of Phoenix.
- * Bernard O'Rourke is the Executive Vice President and Chief Operating Officer. Mr. O'Rourke was appointed InSight's Executive Vice President and Chief Operating Officer on May 15, 2008. From March 28, 2006 until May 15, 2008, Mr. O'Rourke served as InSight's Senior Vice President and General Manager, Eastern Division. From January 17, 2005 to March 26, 2006, Mr. O'Rourke served as InSight's Area Vice President-Enterprise Operations, Northeast.

As demonstrated above, the current executive team of InSight has substantial knowledge and experience in operating imaging centers. This team can develop and implement strategies to ensure that CAI is an effective competitor in the Roanoke area.

C. InSight has the Financial Capability to Make CAI a Viable Competitor for the Provision of Imaging Services in Roanoke

The transaction has no financing contingencies, and it is our understanding that InSight will be funding this transaction from cash on hand. In its SEC report for the quarter ended December 31, 2009, InSight reported that it had \$16.7 million in cash, cash equivalents and restricted cash. As described in its SEC filings, InSight is pursuing a core market strategy that it believes will allow it more operating efficiencies and synergies than are available in a nationwide strategy. InSight states that a core market is based on many factors, including, without limitation, demographic and population trends, utilization and reimbursement rates, existing and potential market share, the potential for profitability and return on assets, competition within the surrounding area, regulatory restrictions, such as certificates of need, and potential for alignment with radiologists, hospitals or payors. While not stated in its SEC filings, Carilion understands that InSight views Virginia as a desirable market for growth.

D. CAI, Under InSight's Ownership, Will Be an Active and Aggressive Competitor in the Roanoke Region

InSight will be an active and aggressive competitor for imaging services in the Roanoke area. Carilion understands that InSight's regional management team has a proven record of success. That management team's region represents a significant percentage of InSight's revenue and was developed through acquisitions such as the one proposed in Roanoke. The regional team has continued to evolve and develop the region to provide a strong cornerstone for future growth in the area.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. InSight has Developed a Business Plan to Compete in the Roanoke Area

We understand that InSight has a well developed business plan provided separately to the FTC staff by InSight, which describes InSight's plan to be an effective competitor in the Roanoke area.

F. InSight is Not a Current Competitor in the Imaging Services Market in Roanoke.

Although InSight has locations in more than thirty states, including three fixed-site centers in Northern Virginia, it does not currently have an imaging center in Roanoke, Virginia. Thus, InSight will be a new competitor for imaging services in the Roanoke area.

IV. THE INTERESTS BEING DIVESTED ARE CONSISTENT WITH THE TERMS AND PURPOSES OF THE DECISION AND ORDER

As required by the Decision and Order, the transaction has been structured to divest all of the ownership of CAI to InSight. The transaction has been structured as an asset acquisition. The terms of the Asset Purchase Agreement provide InSight with all of the technical and physical capabilities necessary to allow InSight to be an effective competitor in the Roanoke area. As a result, InSight will have the technology and (as described above) the business acumen to successfully operate the CAI business.

A. Transfer of All of the Equipment and Assets of CAI

The Asset Purchase Agreement will transfer all of Carilion's assets, properties, and improvements Carilion utilized in running or that are relating to CAI (other than excluded

properties). Specifically, the assets to be transferred include property and equipment, transferable rights in the third COPN, and assumed contracts. As a result, the transfer will include the imaging equipment and machinery at CAI, including (but not limited to) the two MRI machines as well as the CT machine currently operating at CAI.

In addition, the Asset Purchase Agreement transfers ownership to InSight of drawings, designs, reports, technical expertise, customer/patient lists, telephone numbers, post office box, websites, domain names, marketing and advertising materials, computer software and hardware and all other assets of a similar nature, as well as manuals, books of account, personnel records of Company employees, patient, physician and customer records and other operating data, and all other tangible assets used in or as a part of the Business. The transaction also provides InSight with ownership of all trade names, trademarks, patents, copyrights, and other intellectual property that relates to CAI and retains for InSight the contracts currently in place at CAI. In short, the Asset Purchase Agreement provides InSight with all information and equipment necessary to ensure that CAI continues operating as an effective competitor immediately upon divestiture.

[REDACTED]

B. Transfer of the COPNs and Licenses

CAI currently has COPNs for three MRIs and one CT machine. As part of the asset transaction, the ownership of those COPNs will transfer to InSight. InSight will have to file a change of ownership notice with the Commonwealth. It is our understanding that InSight will make that notification. In addition, InSight will need to notify Medicare and Medicaid of the change of ownership, a notification that is a standard part of any provider related transaction.

[REDACTED]

C. InSight's Opportunity to Hire Employees Currently Working at CAI.

The Asset Purchase Agreement provides that InSight can interview and select those employees, currently working at CAI that InSight would like to continue to have work at CAI once divested. The Asset Purchase Agreement identifies the employees that InSight will continue to employ.

[REDACTED]

[REDACTED]

D. Managed Care Contracts

[REDACTED]

E. Transition Services

[REDACTED]

[REDACTED]

G. The Parties Propose An Escrow Agent

To serve as the escrow agent for the arrangement described above, the parties propose C.J. King, an independent accountant at Cole & King, LLC. C.J. King is a principal of Cole & King, LLC. Cole & King is a Virginia corporation located at 2707 Brambleton Ave, SW, Roanoke, Virginia. Cole & King was incorporated in Virginia in 1992 and has achieved an A+ ranking by the Virginia Better Business Bureau. Importantly, Cole & King does not provide accounting or consulting services to any of the parties involved in this transaction.

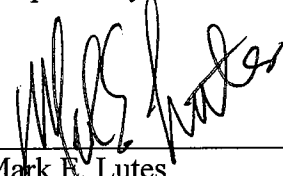
V. CONCLUSION

Key to the success of this divestiture is the presence of a buyer with expertise in running an independent imaging center. InSight has that expertise. However, just as critical to the success of a divested CAI and for the ability of InSight to begin operations immediately after divestiture, was the ability of InSight to engage the radiologists currently servicing CAI so that those radiologists would continue to services CAI after divestiture. Both Carilion and InSight

expended a significant amount of time and effort to ensure that the radiologists would continue to service the imaging center, and to structure a deal that would be acceptable not only to InSight but to the radiologists. As a result of those efforts, as described above, the divestiture of CAI will meet the purposes of the Decision and Order to restore competition to the Roanoke area. Accordingly, Carilion hereby requests the divestiture of CAI to InSight.

PUBLIC VERSION

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Mark E. Lutes', written over a horizontal line.

Mark E. Lutes
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Counsel for Carilion Clinic

Date: May 10, 2010

REDACTED